IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4301 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PARBATBHAI ARJANBHIA VALA - Appellant(s)
Versus
GUJARAT AMBUJA CEMENTS LTD. & 2 - Defendant(s)

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Appearance :

MS SEJAL K MANDAVIA for Appellant(s) : 1,
MR KETAN SHAH for Defendant(s) : 1 - 2.
MR NAGESH C SOOD for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 25/01/2007

ORAL JUDGMENT

This is an appeal by the original claimant, who filed M.A.C. Petition No. 855/1999 [old No. 266/1994] for obtaining compensation for the damage caused to his property i.e., tractor in a vehicular accident, which

occurred on 3/10/1993 at 9.00 am on Veraval – Una Road near Simasi village. The award has been made by the M.A.C. Tribunal [Aux.], Veraval, on 7/11/2001. The Claims Tribunal has awarded a sum of Rs.47,000/- for the damage caused to the tractor of the appellant.

2. It is the case of the appellant that on 3/10/1993 his driver – Ranchhod Vashram was going from Una to Kanakiya in a tractor owned by appellant. When he reached near village Simasi on Una – Veraval road, the driver of respondent no. 1, came driving jeep bearing Registration No,. GCE 84 and dashed it against the tractor. As a result of the same, extensive damage was caused to the tractor. According to the appellant, the accident occurred solely due to the rash and negligent driving of driver of respondent no. 1. He, therefore, filed aforesaid claim petition for obtaining compensation of Rs.84,395/-. The jeep belonged to respondent no. 1 – Gujarat Ambuja Cements Ltd., and it was insured with respondent no. 2 i.e., National Insurance Co. Ltd.

2.1. The claim was resisted by respondent no. 3 – the Insurance Company by filing written statement at Exh. 16. It was contended therein that accident did not occur due to any negligence on the part of driver of respondent no. 1, but it was caused due to negligence on the part of driver of the tractor. Respondents no. 1 and 2 did not file any written statement nor did contest the proceedings. In view of the same, respondent no. 3 Insurance Company was

permitted under section 170 to contest all the issues raised in the proceedings.

2.2. At the hearing, the parties produced evidence, oral as well as documentary. On the basis of the material produced before it, the Tribunal held that the accident occurred due to rash and negligent driving of driver of Jeep bearing Registration No. GCA 84. The Tribunal also determined the compensation at Rs.47,000/- and held all the respondents jointly and severally liable to satisfy the award. Now according to the appellant, the compensation awarded by the Tribunal is inadequate and hence he has preferred this appeal.

3. Ms. Jyotsana Sadhu, learned advocate appearing for Ms. Sejal Mandavia for appellant has submitted that the Tribunal has not properly assessed the compensation. She has submitted that considering the documentary evidence and in particular the bills indicating the amount spent by the appellant for repairing the tractor, the Tribunal ought to have awarded the full claim of the appellant. She has also submitted that because of the damaged condition, vehicle could not plied for considerable period i.e., almost one and half month and that has also caused loss of income to the appellant. She has, therefore, submitted that the amount of compensation is required to be enhanced adequately.

3.1. As against that, Mr. Nagesh Sood, learned advocate for the Insurance Company has supported the judgment. He has submitted that the Tribunal has taken into consideration the reliable documentary evidence and on the basis of the same, has awarded Rs.47,000/- by way of compensation. Therefore, according to him, award is just and proper and needs no interference from this Court.

4. Having carefully considered the submissions of the learned advocates and having closely perused the record of the appeal, it clearly appears that the tractor had suffered extensive damage. The photographs of the tractor have been exhibited and they are on record. They show that the tractor was almost destroyed. It was put in a repairing garage and it took about one and half month for carrying out the necessary repairs. I have perused the relevant discussion on this count in the judgment. First of all, it is necessary to examine whether under the head of loss of income the Tribunal has awarded proper sum. The appellant claimed Rs.18,000/- under the said head since according to him, the tractor used to generate income of Rs.12,000/- per month and it remained idle for one and half month. No serious effort has been made by the otherside to challenge this version. However, the Tribunal, after holding that no proper evidence was produced on this count, awarded a sum of Rs.5,000/- under this head. This appears to be on lower side. It is a matter of common knowledge that tractor has lot of utility. It can be used for various purposes i.e., for

agriculture, for transporting goods, for carriage of passengers, etc. Therefore, there is every possibility that the appellant could have generated substantial income by giving the tractor on hire or by plying it himself. In such circumstances, his monthly income could well be assessed at Rs.7,000/- to Rs.8,000/-. There is evidence that it remained idle for one and half month. Therefore, in my opinion, the loss of income for the period the tractor remained idle could well be assessed at Rs.12,000/-. The Tribunal has already awarded Rs.5,000/-. Therefore, the Insurance Company is now required to pay additional sum of Rs.7,000/- on that count.

4.1. Further there is documentary evidence in the form of panchnama and in the opinion of panchas the damage was to the extent of Rs.50,000/-. The Tribunal at-least should have placed reliance on this part of evidence of panchas. The appellant, therefore, will be entitled to receive Rs.3,000/- more under the head of loss incurred for repairing the tractor. Thus, the appellant deserves enhancement of Rs.10,000/- together with interest and proportionate costs. In view of the same, the respondents are jointly and severally directed to pay additional sum of Rs.10,000/- to the appellant together with running interest at the rate of 9% p.a. The said amount will be deposited by the Insurance Company with the Tribunal within six months from the date of this judgment. This appeal is, therefore, partly allowed.

[Akshay H Mehta, J.]

* Pansala.